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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 1994

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
	)	
Regulatory Treatment of Mobile Services	)	

To: The Commission

COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

Vanguard Cellular Systems, Inc. ("Vanguard"), by its attorneys, hereby submits its comments in connection with the Commission's Second Further Notice of Proposed Rulemaking in the above-referenced proceeding.[1/] At this time, Vanguard addresses only one aspect of the *Notice,* that is, the Commission's consideration of whether certain types of joint marketing arrangements should be deemed to create attributable interests for the purpose of determining compliance with spectrum caps. Vanguard concurs with the Commission's conclusion that joint marketing benefits consumers. *Notice* at ¶ 16. Consequently, Vanguard submits that the Commission should not adopt any rule that unreasonably restricts the ability of cellular and other CMRS carriers to market jointly through common trademarks or advertising campaigns.

1/ Implementation of Sections 3(n) and 332 of the Communications Act, *Second Further Notice of Proposed Rulemaking,* GN Docket No. 93-252, rel. July 20, 1994 (the *"Notice"*).

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I. INTRODUCTION

Vanguard is a major cellular carrier with a long term commitment to the cellular industry. It began its involvement in cellular in 1984 and today is one of the 20 largest cellular carriers in the United States. Vanguard now serves more than 190,000 subscribers through 22 cellular systems in the eastern half of the country.

Vanguard, along with McCaw Cellular and Southwestern Bell Mobile Systems, also is one of the three owners of the Cellular One Group. The Cellular One Group owns the service mark Cellular One®, which is made available to all Frequency Block A cellular carriers nationwide.[2/] This arrangement permits Frequency Block A cellular carriers (frequently referred to as "non-wireline carriers") to use the Cellular One® service mark, advertising and marketing materials and joint advertising, such as commercials shown during televised sports events. Cellular One® recently has added an addendum to its licensing agreements that permits licensees to advertise and promote the Cellular One Network®, which provides seamless roaming service through the North American Cellular Networks.

Vanguard submits that the nature of Cellular One® is such that the Commission should exclude it from any attribution requirements that may be adopted for joint marketing arrangements. Cellular One® and similar arrangements, such as MobiLink, the marketing arrangement that now exists among wireline cellular carriers, do not have the same implications for competition as, for instance, joint marketing by two or more radio stations in a single market. Carrier participation in Cellular One® also benefits consumers. Thus, any

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2/ Although all Block A cellular carriers may participate in Cellular One®, not all Block A carriers have chosen to become licensees.

rationale that would support adoption of an attribution rule for joint marketing arrangements would not apply to Cellular One.®

II. The Nature of Cellular One® and Similar Joint Marketing Arrangements Is Such that the Competitive Concerns Described in the *Notice* Do Not Apply.

The Commission's primary concern in considering the potential attribution of joint marketing arrangements is whether such arrangements have anticompetitive effects. *Notice* at ¶ 16. The Commission has addressed this concern in other areas, notably broadcast, and concluded that there should be some limitations on such arrangements when the licensees serve the same market. *Id.* at ¶ 15, quoting Revision of Radio Rules and Policies, *Report and Order,* 7 FCC Rcd 2755, 2788 (1992). While it is possible that the broadcast rationale may be extended to cellular and other commercial mobile radio services, Vanguard submits that this rationale would not support applying attribution requirements to Cellular One® and similar arrangements.

As described above, Cellular One® allows non-wireline cellular carriers to use a service mark and associated marketing materials and engages in other marketing activities for Cellular One® carriers, such as broadcast advertising. A carrier's right to use the service mark, however, is strictly geographically delineated, and one carrier may not use Cellular One® materials to market to customers in another carrier's service area.[3/] While there is some inevitable incidental overlap in marketing, parties to the Cellular One® agreement do

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3/ It is Vanguard's understanding that MobiLink has the same characteristics in this regard as Cellular One®.

not pool resources to sell their service to customers in a single market. In fact, because only Block A carriers may participate in Cellular One®, there cannot be any meaningful overlap between service areas of parties to the Cellular One® agreement.

As a consequence, the relationship among cellular carriers that are part of the Cellular One® arrangement is much different than the kinds of joint marketing arrangements that trigger attribution in the broadcast context. Joint marketing arrangements in the broadcast context are considered attributable because the parties cover the same service area; in the cellular context, the parties cannot serve the same area. In fact, the Cellular One® agreement is much more closely analogous to network affiliation in broadcasting. Like a network affiliate, a party to the Cellular One® agreement is provided with certain services and has a defined territory, which, in the main, does not overlap or compete with other parties to the arrangement.[4/] The Commission does not, of course, apply its attribution rules to broadcast stations that are linked only by a common network affiliation and, consequently, it should not stretch its attribution rules for the commercial mobile radio services to encompass arrangements like Cellular One®.

Arrangements like Cellular One® also benefit consumers. As the Commission recognized in the *Notice,* the economies created by joint marketing and advertising allow Cellular One® carriers to charge lower prices. *Notice* at ¶ 14. Equally important, the Cellular One® service mark represents a level of quality and certain features of cellular

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4/ In practice, there is considerably more overlap between the service areas of broadcast network affiliates than there is between the service areas of parties to the Cellular One® agreement.

service that are recognizable to consumers. These features include the North American Cellular Network®, which permits calling from cellular telephone across the country, and which is facilitated by Cellular One®.

Consumers benefit as well from the competition between carriers that participate in Cellular One® and those that participate in other joint marketing arrangements such as MobiLink. These branded services make it easier for consumers to understand the benefits of and distinctions between different groups of carriers. For non-wireline carriers, the existence of Cellular One® is particularly important, because it provides them with a unified marketing presence to counter the large, contiguous coverage areas of many wireline carriers. For a carrier such as Vanguard, with several non-contiguous clusters of along the Eastern seaboard, the availability of Cellular One® is a significant step towards leveling the competitive playing field.

Applying attribution rules to joint marketing arrangements that are structured like the Cellular One® agreement also could have unintended consequences. As the Commission is aware, it already is difficult to apply spectrum caps fairly in an environment where different services can have widely differing service areas. This is a particular problem when considering PCS and cellular, because cellular service areas do not, in general, align with MTAs and BTAs.[5/] If joint marketing arrangements are treated as attributable, cellular carriers that are now eligible for 30 MHz PCS authorizations could be deemed ineligible merely because another carrier on the other side of the MTA has joined the Cellular One®

5/ Similar concerns arise from SMR and paging services, but their service are not specifically allocated in the same way as PCS and cellular.

agreement. Similarly, a carrier that is eligible today could have its eligibility curtailed abruptly if a nearby cellular carrier joined the Cellular One® agreement at a later date. There is no public interest justification for either result.

Such results would be especially ironic because Cellular One® is strictly a marketing arrangement for cellular services and ancillary services permitted in the cellular spectrum. Cellular carriers cannot use the service mark to market SMR service or, in the future, services using PCS spectrum. As a result, the concerns regarding cross-marketing of services that might arise from other joint marketing arrangements do not apply to Cellular One®.

Thus, any rules the Commission adopts that would treat joint marketing arrangements as creating attributable interests should exclude the Cellular One® licensing agreement or other similar future arrangements that share the key characteristics of Cellular One®, such as geographic separation of parties to the arrangement. The concerns that might arise from other kinds of joint marketing arrangements does not apply to Cellular One®. At the same time, treating Cellular One® as creating an attributable interest could have unintended and unreasonable effects on cellular carriers.

III. CONCLUSION

For all of these reasons, Vanguard Cellular Systems, Inc. submits that the Commission should proceed in this rulemaking in accordance with the positions described herein.

Respectfully submitted,

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